

10-3  
2

FOR PUBLICATION

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

MERRILL LYNCH, PIERCE,  
FENNER AND SMITH, INCORPORATED,  
a corporation organized and  
existing under the laws of the  
State of Delaware with its  
principal place of business in New  
York, New York,

*Plaintiff-Appellee,*

v.

ENC CORPORATION; SUNTRUST  
INVESTMENT CO., S.A., a  
corporation organized and existing  
under the laws of Switzerland with  
an address at rue de Jargonnant 2,  
P.O. Box 76, 1211 Geneva 6,  
Switzerland; JOHN K. BURNS, a  
citizen of the United States, with  
an address at 300 Wacker Drive,  
Suite, 900, Chicago, Illinois,  
60606; THE ESTATE OF FERDINAND  
E. MARCOS; IMELDA R. MARCOS;  
FERDINAND R. MARCOS, JR.; MARIA  
IMELDA MARCOS; IRENE MARCOS  
ARANETA; FRONTIER RISK CAPITAL  
MANAGEMENT, L.C.C., a limited  
liability company organized and  
existing under the laws of the  
States of Nevada, with a registered  
office at 6100 Neil Road, Suite

No. 04-16401

D.C. No.  
CV-00-00595-MLR

11070

MERRILL LYNCH V. ARELMA, INC.

500, Reno, NV. 89511 and an address at 300 Wacker Drive, Suite 900, Chicago, IL 60606; GROSVENOR CAPITAL LTD., a company organized and existing under the law of the United Kingdom, with an address at Grosvenor Gardens House, Suite 117, 35-37 Grosvenor Gardens, London SW1 W OBS, United Kingdom; THE ESTATE OF ROGER ROXAS; GOLDEN BUDHA CORPORATION, a corporation organized and existing under the laws of the State of Georgia, with a registered office at 710 West First Street, Blue Ridge, Georgia 30513, and a mailing address at 260 Carrollton St., Buchanan, GA 30113,

*Defendants,*

and

ARELMA, INC., a corporation organized and existing under the laws of Panama with a permanent address at Ave. Justo Alosemena y Calle 41 Este, No. 40-59 Pte al Colegio Immaculada, Panama I.Rep.de Panama, and a mailing address at c/o Suntrust Investment

MERRILL LYNCH V. ARELMA, INC.

11071

Co.S.A., rue de Jargonnant 2, P.O.  
Box 76, 1211 Geneva 6,  
Switzerland,

*Defendant-Appellant,*

MARIANO J. PIMENTEL, on behalf of  
himself and all other persons  
similarly situated,

*Defendant-Appellee,*

PHILIPPINE NATIONAL BANK,

*Defendant-Appellant.*

MERRILL LYNCH, PIERCE,  
FENNER AND SMITH, INCORPORATED,  
a corporation organized and  
existing under the laws of the  
State of Delaware with its  
principal place of business in New  
York, New York,

*Plaintiff-Appellee,*

v.

ENC CORPORATION; ARELMA, INC.,  
a corporation organized and  
existing under the laws of Panama  
with a permanent address at Ave.  
Justo Alosemena y Calle 41 Este,  
No. 40-59 Pte al Colegio  
Immaculada, Panama 1.Rep.de  
Panama, and a mailing address at  
c/o Suntrust Investment Co.S.A.,

No. 04-16503

D.C. No.  
CV-00-00595-MLR

11072

MERRILL LYNCH V. ARELMA, INC.

rue de Jargonnant 2, P.O. Box 76, 1211 Geneva 6, Switzerland; SUNTRUST INVESTMENT Co., S.A., a corporation organized and existing under the laws of Switzerland with an address at rue de Jargonnant 2, P.O. Box 76, 1211 Geneva 6, Switzerland; JOHN K. BURNS, a citizen of the United States, with an address at 300 Wacker Drive, Suite, 900, Chicago, Illinois, 60606; THE ESTATE OF FERDINAND E. MARCOS; IMELDA R. MARCOS; FERDINAND R. MARCOS, Jr.; MARIA IMELDA MARCOS; IRENE MARCOS ARANETA; FRONTIER RISK CAPITAL MANAGEMENT, L.C.C., a limited liability company organized and existing under the laws of the States of Nevada, with a registered office at 6100 Neil Road, Suite 500, Reno, NV. 89511 and an address at 300 Wacker Drive, Suite 900, Chicago, IL 60606; GROSVENOR CAPITAL LTD., a company organized and existing under the law of the United Kingdom, with an address at Grosvenor Gardens House, Suite 117, 35-37 Grosvenor Gardens, London SW1 W OBS, United Kingdom; THE ESTATE OF ROGER

MERRILL LYNCH V. ARELMA, INC.

11073

ROXAS; GOLDEN BUDHA  
CORPORATION, a corporation  
organized and existing under the  
laws of the State of Georgia, with  
a registered office at 710 West  
First Street, Blue Ridge, Georgia  
30513, and a mailing address at  
260 Carrollton St., Buchanan, GA  
30113; PHILIPPINE NATIONAL BANK,  
*Defendants,*

and

MARIANO J. PIMENTEL, on behalf of  
himself and all other persons  
similarly situated,  
*Defendant-Appellee,*

REPUBLIC OF THE PHILIPPINES;  
PRESIDENTIAL COMMISSION ON GOOD  
GOVERNMENT, a government  
agency of the Republic of the  
Philippines,  
*Defendants-Appellants.*

11074

MERRILL LYNCH V. ARELMA, INC.

MERRILL LYNCH, PIERCE,  
FENNER AND SMITH, INCORPORATED,  
a corporation organized and  
existing under the laws of the  
State of Delaware with its  
principal place of business in New  
York, New York,

*Plaintiff-Appellee,*

v.

ENC CORPORATION; ARELMA, INC.,  
a corporation organized and  
existing under the laws of Panama  
with a permanent address at Ave.  
Justo Alosemena y Calle 41 Este,  
No. 40-59 Pte al Colegio  
Immaculada, Panama 1.Rep.de  
Panama, and a mailing address at  
c/o Suntrust Investment Co.S.A.,  
rue de Jargonnant 2, P.O. Box 76,  
1211 Geneva 6, Switzerland;  
SUNTRUST INVESTMENT CO., S.A., a  
corporation organized and existing  
under the laws of Switzerland with  
an address at rue de Jargonnant 2,  
P.O. Box 76, 1211 Geneva 6,  
Switzerland; JOHN K. BURNS, a  
citizen of the United States, with  
an address at 300 Wacker Drive,  
Suite, 900, Chicago, Illinois,  
60606; THE ESTATE OF FERDINAND  
E. MARCOS; IMELDA R. MARCOS;  
FERDINAND R. MARCOS, JR.; MARIA  
IMELDA MARCOS; IRENE MARCOS

No. 04-16538

D.C. No.

CV-00-00595-MLR

ORDER

MERRILL LYNCH V. ARELMA, INC.

11075

ARANETA; FRONTIER RISK CAPITAL MANAGEMENT, L.C.C., a limited liability company organized and existing under the laws of the States of Nevada, with a registered office at 6100 Neil Road, Suite 500, Reno, NV. 89511 and an address at 300 Wacker Drive, Suite 900, Chicago, IL 60606; GROSVENOR CAPITAL LTD., a company organized and existing under the law of the United Kingdom, with an address at Grosvenor Gardens House, Suite 117, 35-37 Grosvenor Gardens, London SW1 W OBS, United Kingdom; PHILIPPINE NATIONAL BANK; REPUBLIC OF THE PHILIPPINES; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, a government agency of the Republic of the Philippines,

*Defendants,*

and

THE ESTATE OF ROGER ROXAS;  
GOLDEN BUDHA CORPORATION, a corporation organized and existing under the laws of the State of Georgia, with a registered office at 710 West First Street, Blue Ridge,

11076

MERRILL LYNCH v. ARELMA, INC.

---

Georgia 30513, and a mailing  
address at 260 Carrollton St.,  
Buchanan, GA 30113,

*Defendants-Appellants,*

MARIANO J. PIMENTEL, on behalf of  
himself and all other persons  
similarly situated,

*Defendant-Appellee.*

Filed September 12, 2006

Before: John T. Noonan, Sidney R. Thomas, Circuit Judges,  
and James L. Robart,\* District Judge.

---

### ORDER

The opinion filed May 4, 2006, and amended May 9, 2006,  
is hereby WITHDRAWN. An amended opinion is filed con-  
currently with this order.

With the filing of the amended opinion, the panel has voted  
to deny the petition for rehearing. Judge Thomas has voted to  
deny the petition for rehearing en banc, and Judge Noonan  
and Judge Robart so recommend.

The full court has been advised of the petition for rehearing  
en banc, and no active judge has requested a vote whether to  
rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing is DENIED, and the petition for  
rehearing en banc is DENIED.

---

\*The Honorable James L. Robart, United States District Judge for the  
Western District of Washington, sitting by designation.

Page 2 NON-PUBLIC

INTERNAL USE ONLY: Proceedings include all events.  
04-16401 Merrill Lynch, v. Arelna, Inc., et al

a corporation organized and  
existing under the laws of  
Switzerland with an address at  
rue de Jargonnant 2, P.O. Box  
76, 1211 Geneva 6, Switzerland  
Defendant

FAX 808-524-8293  
808-529-7300  
4th Floor  
[COR LD NTC ret]  
MCCORRISTON MILLER MUKAI  
MackINNON LLP  
Attorney at Law  
Five Waterfront Plaza  
500 Ala Moana Boulevard  
Honolulu, HI 96813

JOHN K. BURNS, a citizen of  
the United States, with an  
address at 300 Wacker Drive,  
Suite, 900, Chicago, Illinois,  
60606; THE ESTATE OF FERDINAND  
E. MARCO; IMELDA R. MARCO;  
FERDINAND R. MARCO, JR.; MARIA  
IMELDA MARCOS; IRENE MARCOS  
ARANETA  
Defendant

FRONTIER RISK CAPITAL  
MANAGEMENT, L.C.C., a limited  
liability company organized  
and existing under the laws of  
the States of Nevada, with a  
registered office at 6100 Neil  
Road, Suite 500, Reno, NV.  
89511 and an address at 300  
Wacker Drive, Suite 900,  
Chicago, IL 60606; GROSVENOR  
CAPITAL LTD., a company  
organized and existing under  
the law of the United Kingdom,  
with an address at Grosvenor  
Gardens House, Suite 117, 35-  
37 Grosvenor Gardens, London  
SW1 W OBS, United Kingdom  
Defendant

THE ESTATE OF ROGER ROXAS  
Defendant

Daniel C. Cathcart, Esq.  
FAX 310/785-9143  
310/553-6630  
Suite 810  
[COR LD NTC ret]  
MAGANA CATHCART & MCCARTHY  
1801 Avenue of the Stars  
Los Angeles, CA 90067-5899

GOLDEN BUDHA CORPORATION, a  
corporation organized and  
existing under the laws of the  
State of Georgia, with a

Daniel C. Cathcart, Esq.  
(See above)  
[COR LD NTC ret]

INTERNAL USE ONLY: Proceedings include all events.  
04-16503 Merrill Lynch, v. Philippines, et al

MERRILL LYNCH, PIERCE, FENNER  
AND SMITH, INCORPORATED, a  
corporation organized and  
existing under the laws of the  
State of Delaware with its  
principal place of business in  
New York, New York  
Plaintiff - Appellee

Jeffrey S. Portnoy, Esq.  
FAX 808/540-5040  
808/521-9200  
Suite 1100  
[COR LD NTC ret]  
CADES, SCHUTTE, FLEMING &  
WRIGHT  
1000 Bishop Street  
Honolulu, HI 96813

A. Robert Pietrzak, Esq.  
212/839-5300  
[COR LD NTC ret]  
SIDLEY AUSTIN, LLP  
787 Seventh Avenue  
New York, NY 10019

v.

ENC CORPORATION  
Defendant

Andrew V. Beaman, Esq.  
808/528-8200  
900 Hawaii Tower  
[COR LD ret]  
CHUN, KERR, DODD, BEAMAN & WONG  
745 Fort Street  
Honolulu, HI 96813

ARELMA, INC., a corporation  
organized and existing under  
the laws of Panama with a  
permanent address at Ave.  
Justo Alosemena y Calle 41  
Este, No. 40-59 Pte al Colegio  
Immaculada, Panama 1.Rep.de  
Panama, and a mailing address  
at c/o Suntrust Invenstment  
Co.S.A., ru de Jargonant 2,  
P.O. Box 76, 1211 Geneva 6,  
Switzerland  
Defendant

Barry A. Smith  
Suite 2400  
[COR LD ret]  
BUCHALTER NEMER FIELDS &  
YOUNGER, APC  
601 S. Figueroa St.  
Los Angeles, CA 90017-5704

Carol A. Eblen, Esq.  
808/547-5600  
18th Floor  
[COR LD ret]  
Ali'i Place  
1099 Alakea Street  
Honolulu, HI 96813

SUNTRUST INVESTMENT CO., S.A.,  
a corporation organized and  
existing under the laws of  
Switzerland with an address at  
rue de Jargonant 2, P.O. Box  
76, 1211 Geneva 6, Switzerland  
Defendant

William C. McCorriston, Esq.  
FAX 808-524-8293  
808-529-7300  
4th Floor  
[COR LD ret]  
MCCORRISTON MILLER MUKAI  
MacKINNON LLP  
Attorney at Law  
Five Waterfront Plaza  
500 Ala Moana Boulevard

INTERNAL USE ONLY: Proceedings include all events.  
04-16538 Merrill Lynch, v. Estate of Roger, et al

MERRILL LYNCH, PIERCE, FENNER  
AND SMITH, INCORPORATED, a  
corporation organized and  
existing under the laws of the  
State of Delaware with its  
principal place of business in  
New York, New York  
Plaintiff - Appellee

Jeffrey S. Portnoy, Esq.  
FAX 808/540-5040  
808/521-9200  
Suite 1100  
[COR LD NTC ret]  
CADES, SCHUTTE, FLEMING &  
WRIGHT  
1000 Bishop Street  
Honolulu, HI 96813

A. Robert Pietrzak, Esq.  
212/839-5300  
[COR LD NTC ret]  
SIDLEY AUSTIN, LLP  
787 Seventh Avenue  
New York, NY 10019

v.

ENC CORPORATION  
Defendant

Andrew V. Beaman, Esq.  
808/528-8200  
900 Hawaii Tower  
[COR LD ret]  
CHUN, KERR, DODD, BEAMAN & WONG  
745 Fort Street  
Honolulu, HI 96813

ARELMA, INC., a corporation  
organized and existing under  
the laws of Panama with a  
permanent address at Ave.  
Justo Alosemena y Calle 41  
Este, No. 40-59 Pte al Colegio  
Immaculada, Panama 1.Rep.de  
Panama, and a mailing address  
at c/o Suntrust Investment  
Co.S.A., ru de Jargonant 2,  
P.O. Box 76, 1211 Geneva 6,  
Switzerland  
Defendant

Barry A. Smith  
Suite 2400  
[COR LD ret]  
BUCHALTER NEMER FIELDS &  
YOUNGER, APC  
601 S. Figueroa St.  
Los Angeles, CA 90017-5704

Carol A. Eblen, Esq.  
808/547-5600  
18th Floor  
[COR LD ret]  
Ali'i Place  
1099 Alakea Street  
Honolulu, HI 96813

SUNTRUST INVESTMENT CO., S.A.,  
a corporation organized and  
existing under the laws of  
Switzerland with an address at  
rue de Jargonant 2, P.O. Box  
76, 1211 Geneva 6, Switzerland  
Defendant

William C. McCorriston, Esq.  
FAX 808-524-8293  
808-529-7300  
4th Floor  
[COR LD ret]  
MCCORRISTON MILLER MUKAI  
MackINNON LLP  
Attorney at Law  
Five Waterfront Plaza  
500 Ala Moana Boulevard

INTERNAL USE ONLY: Proceedings include all events.  
04-16538 Merrill Lynch, v. Estate of Roger, et al

Honolulu, HI 96813

JOHN K. BURNS, a citizen of  
the United States, with an  
address at 300 Wacker Drive,  
Suite, 900, Chicago, Illinois,  
60606; THE ESTATE OF FERDINAND  
E. MARCO; IMELDA R. MARCO;  
FERDINAND R. MARCO, JR.; MARIA  
IMELDA MARCOS; IRENE MARCOS  
ARANETA

Defendant

Terry R. Grimm  
[COR LD ret]  
WINSTON & STRAWN LLP  
35 W. Wacker Dr.  
Chicago, IL 60601-9703

FRONTIER RISK CAPITAL  
MANAGEMENT, L.C.C., a limited  
liability company organized  
and existing under the laws of  
the States of Nevada, with a  
registered office at 6100 Neil  
Road, Suite 500, Reno, NV.  
89511 and an address at 300  
Wacker Drive, Suite 900,  
Chicago, IL 60606; GROSVENOR  
CAPITAL LTD., a company  
organized and existing under  
the law of the United Kingdom,  
with an address at Grosvenor  
Gardens House, Suite 117, 35-  
37 Grosvenor Gardens, London  
SW1 W OBS, United Kingdom

Defendant

Terry R. Grimm  
(See above)  
[COR LD ret]

THE ESTATE OF ROGER ROXAS  
Defendant - Appellant

Alexander T. MacLaren, Esq.  
Suite 2450  
[COR LD NTC ret]  
1001 Bishop Street  
Honolulu, HI 96813

Daniel C. Cathcart, Esq.  
FAX 310/785-9143  
310/553-6630  
Suite 810  
[COR LD NTC ret]  
MAGANA CATHCART & McCARTHY  
1801 Avenue of the Stars  
Los Angeles, CA 90067-5899

Ward D. Jones, Esq.  
FAX 808/550-4991  
808/550-4990  
Suite 1400  
[COR LD ret]  
BERVAR & JONES  
1001 Bishop Street